

**Introduced by Senator Ashburn**

February 22, 2005

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An act to amend Sections 17053.33 and 23633 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1001, as introduced, Ashburn. Income and corporation tax credits: qualified property.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the the taxes imposed by those laws, including a credit for the sales and use tax paid for the purchase of qualified property, as defined, used by a qualified taxpayer, as defined, in a targeted tax area. Among other things, the credit is for the total cost of qualified property purchased and placed in service in any taxable year in an amount not to exceed \$1,000,000 under the Personal Income Tax Law and \$20,000,000 under the Corporation Tax Law.

This bill would increase the limitation to \$5,000,000 under the Persoanl Income Tax Law and to \$50,000,000 under the Corporation Tax Law.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 17053.33 of the Revenue and Taxation
- 2 Code is amended to read:

17053.33. (a) For each taxable year beginning on or after January 1, 1998, there shall be allowed as a credit against the “net tax” (as defined in Section 17039) for the taxable year an amount equal to the sales or use tax paid or incurred during the taxable year by the qualified taxpayer in connection with the qualified taxpayer’s purchase of qualified property.

(b) For purposes of this section:

(1) “Qualified property” means property that meets all of the following requirements:

(A) Is any of the following:

(i) Machinery and machinery parts used for fabricating, processing, assembling, and manufacturing.

(ii) Machinery and machinery parts used for the production of renewable energy resources.

(iii) Machinery and machinery parts used for either of the following:

(I) Air pollution control mechanisms.

(II) Water pollution control mechanisms.

(iv) Data processing and communications equipment, such as computers, computer-automated drafting systems, copy machines, telephone systems, and faxes.

(v) Motion picture manufacturing equipment central to production and post production, such as cameras, audio recorders, and digital image and sound processing equipment.

(B) The total cost of qualified property purchased and placed in service in any taxable year that may be taken into account by any qualified taxpayer for purposes of claiming this credit shall not exceed ~~one~~ five million dollars ~~(\$1,000,000)~~ (\$5,000,000).

(C) The qualified property is used by the qualified taxpayer exclusively in a targeted tax area.

(D) The qualified property is purchased and placed in service before the date the targeted tax area designation expires, is revoked, is no longer binding, or becomes inoperative.

(2) (A) “Qualified taxpayer” means a person or entity that meets both of the following:

(i) Is engaged in a trade or business within a targeted tax area designated pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code.

(ii) Is engaged in those lines of business described in Codes 2000 to 2099, inclusive; 2200 to 3999, inclusive; 4200 to 4299,

1 inclusive; 4500 to 4599, inclusive; and 4700 to 5199, inclusive,  
2 of the Standard Industrial Classification (SIC) Manual published  
3 by the United States Office of Management and Budget, 1987  
4 edition.

5 (B) In the case of any pass-through entity, the determination of  
6 whether a taxpayer is a qualified taxpayer under this section shall  
7 be made at the entity level and any credit under this section or  
8 Section 23633 shall be allowed to the pass-through entity and  
9 passed through to the partners or shareholders in accordance with  
10 applicable provisions of this part or Part 11 (commencing with  
11 Section 23001). For purposes of this subparagraph, the term  
12 “pass-through entity” means any partnership or ~~S-corporation~~  
13 “S” Corporation.

14 (3) “Targeted tax area” means the area designated pursuant to  
15 Chapter 12.93 (commencing with Section 7097) of Division 7 of  
16 Title 1 of the Government Code.

17 (c) If the qualified taxpayer is allowed a credit for qualified  
18 property pursuant to this section, only one credit shall be allowed  
19 to the taxpayer under this part with respect to that qualified  
20 property.

21 (d) If the qualified taxpayer has purchased property upon  
22 which a use tax has been paid or incurred, the credit provided by  
23 this section shall be allowed only if qualified property of a  
24 comparable quality and price is not timely available for purchase  
25 in this state.

26 (e) In the case where the credit otherwise allowed under this  
27 section exceeds the “net tax” for the taxable year, that portion of  
28 the credit that exceeds the “net tax” may be carried over and  
29 added to the credit, if any, in the following year, and succeeding  
30 years if necessary, until the credit is exhausted. The credit shall  
31 be applied first to the earliest taxable years possible.

32 (f) Any qualified taxpayer who elects to be subject to this  
33 section shall not be entitled to increase the basis of the qualified  
34 property as otherwise required by Section 164(a) of the Internal  
35 Revenue Code with respect to sales or use tax paid or incurred in  
36 connection with the qualified taxpayer’s purchase of qualified  
37 property.

38 (g) (1) The amount of the credit otherwise allowed under this  
39 section and Section 17053.34, including any credit carryover  
40 from prior years, that may reduce the “net tax” for the taxable

1 year shall not exceed the amount of tax that would be imposed on  
2 the qualified taxpayer's business income attributable to the  
3 targeted tax area determined as if that attributable income  
4 represented all of the income of the qualified taxpayer subject to  
5 tax under this part.

6 (2) Attributable income shall be that portion of the taxpayer's  
7 California source business income that is apportioned to the  
8 targeted tax area . For that purpose, the taxpayer's business  
9 income attributable to sources in this state first shall be  
10 determined in accordance with Chapter 17 (commencing with  
11 Section 25101) of Part 11. That business income shall be further  
12 apportioned to the targeted tax area in accordance with Article 2  
13 (commencing with Section 25120) of Chapter 17 of Part 11,  
14 modified for purposes of this section in accordance with  
15 paragraph (3).

16 (3) Business income shall be apportioned to the targeted tax  
17 area by multiplying the total California business income of the  
18 taxpayer by a fraction, the numerator of which is the property  
19 factor plus the payroll factor, and the denominator of which is  
20 two. For purposes of this paragraph:

21 (A) The property factor is a fraction, the numerator of which is  
22 the average value of the taxpayer's real and tangible personal  
23 property owned or rented and used in the targeted tax area during  
24 the taxable year, and the denominator of which is the average  
25 value of all the taxpayer's real and tangible personal property  
26 owned or rented and used in this state during the taxable year.

27 (B) The payroll factor is a fraction, the numerator of which is  
28 the total amount paid by the taxpayer in the targeted tax area  
29 during the taxable year for compensation, and the denominator of  
30 which is the total compensation paid by the taxpayer in this state  
31 during the taxable year.

32 (4) The portion of any credit remaining, if any, after  
33 application of this subdivision, shall be carried over to  
34 succeeding taxable years, as if it were an amount exceeding the  
35 "net tax" for the taxable year, as provided in subdivision (e).

36 (5) In the event that a credit carryover is allowable under  
37 subdivision (e) for any taxable year after the targeted tax area  
38 designation has expired, has been revoked, is no longer binding,  
39 or has become inoperative, the targeted tax area shall be deemed

1 to remain in existence for purposes of computing the limitation  
2 specified in this subdivision.

3 (h) The amendments made to this section by the act adding  
4 this subdivision shall apply to taxable years beginning on or after  
5 January 1, 1998.

6 SEC. 2. Section 23633 of the Revenue and Taxation Code is  
7 amended to read:

8 23633. (a) For each taxable year beginning on or after  
9 January 1, 1998, there shall be allowed as a credit against the  
10 “tax” (as defined by Section 23036) for the taxable year an  
11 amount equal to the sales or use tax paid or incurred during the  
12 taxable year by the qualified taxpayer in connection with the  
13 qualified taxpayer’s purchase of qualified property.

14 (b) For purposes of this section:

15 (1) “Qualified property” means property that meets all of the  
16 following requirements:

17 (A) Is any of the following:

18 (i) Machinery and machinery parts used for fabricating,  
19 processing, assembling, and manufacturing.

20 (ii) Machinery and machinery parts used for the production of  
21 renewable energy resources.

22 (iii) Machinery and machinery parts used for either of the  
23 following:

24 (I) Air pollution control mechanisms.

25 (II) Water pollution control mechanisms.

26 (iv) Data-processing and communications equipment, such as  
27 computers, computer-automated drafting systems, copy  
28 machines, telephone systems, and faxes.

29 (v) Motion picture manufacturing equipment central to  
30 production and post production, such as cameras, audio  
31 recorders, and digital image and sound processing equipment.

32 (B) The total cost of qualified property purchased and placed  
33 in service in any taxable year that may be taken into account by  
34 any qualified taxpayer for purposes of claiming this credit shall  
35 not exceed ~~twenty~~ *fifty* million dollars ~~—(\$20,000,000)~~  
36 ~~(\$50,000,000)~~.

37 (C) The qualified property is used by the qualified taxpayer  
38 exclusively in a targeted tax area.

(D) The qualified property is purchased and placed in service before the date the targeted tax area designation expires, is revoked, is no longer binding, or becomes inoperative.

(2) (A) “Qualified taxpayer” means a corporation that meets both of the following:

(i) Is engaged in a trade or business within a targeted tax area designated pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code.

(ii) Is engaged in those lines of business described in Codes 2000 to 2099, inclusive; 2200 to 3999, inclusive; 4200 to 4299, inclusive; 4500 to 4599, inclusive; and 4700 to 5199, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(B) In the case of any pass-through entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level and any credit under this section or Section 17053.33 shall be allowed to the pass-through entity and passed through to the partners or shareholders in accordance with applicable provisions of this part or Part 10 (commencing with Section 17001). For purposes of this subparagraph, the term “pass-through entity” means any partnership or ~~S~~-corporation “S” Corporation.

(3) “Targeted tax area” means the area designated pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code.

(c) If the qualified taxpayer is allowed a credit for qualified property pursuant to this section, only one credit shall be allowed to the taxpayer under this part with respect to that qualified property.

(d) If the qualified taxpayer has purchased property upon which a use tax has been paid or incurred, the credit provided by this section shall be allowed only if qualified property of a comparable quality and price is not timely available for purchase in this state.

(e) In the case where the credit otherwise allowed under this section exceeds the “tax” for the taxable year, that portion of the credit that exceeds the “tax” may be carried over and added to the credit, if any, in the following year, and succeeding years if

1 necessary, until the credit is exhausted. The credit shall be  
2 applied first to the earliest taxable years possible.

3 (f) Any qualified taxpayer who elects to be subject to this  
4 section shall not be entitled to increase the basis of the qualified  
5 property as otherwise required by Section 164(a) of the Internal  
6 Revenue Code with respect to sales or use tax paid or incurred in  
7 connection with the qualified taxpayer's purchase of qualified  
8 property.

9 (g) (1) The amount of credit otherwise allowed under this  
10 section and Section 23634, including any credit carryover from  
11 prior years, that may reduce the "tax" for the taxable year shall  
12 not exceed the amount of tax that would be imposed on the  
13 qualified taxpayer's business income attributable to the targeted  
14 tax area determined as if that attributable income represented all  
15 of the income of the qualified taxpayer subject to tax under this  
16 part.

17 (2) Attributable income shall be that portion of the taxpayer's  
18 California source business income that is apportioned to the  
19 targeted tax area. For that purpose, the taxpayer's business  
20 income attributable to sources in this state first shall be  
21 determined in accordance with Chapter 17 (commencing with  
22 Section 25101). That business income shall be further  
23 apportioned to the targeted tax area in accordance with Article 2  
24 (commencing with Section 25120) of Chapter 17, modified for  
25 purposes of this section in accordance with paragraph (3).

26 (3) Business income shall be apportioned to the targeted tax  
27 area by multiplying the total California business income of the  
28 taxpayer by a fraction, the numerator of which is the property  
29 factor plus the payroll factor, and the denominator of which is  
30 two. For purposes of this paragraph:

31 (A) The property factor is a fraction, the numerator of which is  
32 the average value of the taxpayer's real and tangible personal  
33 property owned or rented and used in the targeted tax area during  
34 the taxable year and the denominator of which is the average  
35 value of all the taxpayer's real and tangible personal property  
36 owned or rented and used in this state during the taxable year.

37 (B) The payroll factor is a fraction, the numerator of which is  
38 the total amount paid by the taxpayer in the targeted tax area  
39 during the taxable year for compensation, and the denominator of

1 which is the total compensation paid by the taxpayer in this state  
2 during the taxable year.

3 (4) The portion of any credit remaining, if any, after  
4 application of this subdivision, shall be carried over to  
5 succeeding taxable years, as if it were an amount exceeding the  
6 “tax” for the taxable year, as provided in subdivision (e).

7 (5) In the event that a credit carryover is allowable under  
8 subdivision (e) for any taxable year after the targeted tax area  
9 designation has expired, has been revoked, is no longer binding,  
10 or has become inoperative, the targeted tax area shall be deemed  
11 to remain in existence for purposes of computing the limitation  
12 specified in this subdivision.

13 (h) The changes made to this section by the act adding this  
14 subdivision shall apply to taxable years beginning on or after  
15 January 1, 1998.

16 SEC. 3. This act provides for a tax levy within the meaning of  
17 Article IV of the Constitution and shall go into immediate effect.